IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE, CIVIL JURISDICTION

LETTERS PATENT APPEAL NO.129 OF 1996

IN

WRIT PETITION NO.1962 of 1996

1.Shri Santoshkumar Shivgonda Patil)
2.Shri Ajitkumar Shivgonda Patil)
3.Shri Shivgonda Satgonda Patil)..APPELLANTS

Versus

1.Shri Balasaheb Tukaram Shevale)
2.Shri Annasaheb Tukaram Shevale)
3.Sri Appasaheb Tukaram Shevale)
4.Smt. Hirabai w/o.Tukaram Shevale)
5. Sou.Kalawati Ashokrao Jambhale)
6.Shri Parasu Laxman Shevale)
7.Shri Biramrao Piraji Shevale)
8.Shri Santosh Pandurang Shevale)
9.Shri Subhash Krishna Shevale)
10.Shri Ramchandra Piraji Shevale,)
11.Shri Kumar Shankar Shevale)
12.Smt.Shevantabai Shankar Shevale)
13.Shri Manohar Satgonda Patil)
14.The State of Maharashtra)..RESPONDENTS

Mr. N.J. Patil, for the Appellants.
Mr. Abhijit Kulkarni with Mr. A.A. Kumbhakoni, for the Respondents.

CORAM: F.I. REBELLO & ANOOP V.MOHTA, JJ.
DATE : 1st September, 2004

ORAL JUDGMENT (PER F.I. REBELLO, J.)

1. The appeal is directed against the judgment dated 20th June, 1996 of the learned single Judge of this Court. The learned single Judge passed the following order:-

"In the present matter commissioner has rightly held that petitioner was the tenant of the land. When the land was farefeeted to Government for non-payment of Nazarana under the G.R. of 1965

whenever the land is forefeited, Govt. is bound to regrant the land to the tenant.

In the circumstances the Tahsildar was wrong in granting the land to the petitioners as held by Commissioner.

W.P. rejected."

The petition though styled under Articles 226 and 227 of the Constitution was filed by the petitioner to impugn the order dated 29th February, 1996 passed by the learned Commissioner, Pune Division, Pune arising from the judgment and order dated 16th September, 1995 passed by the Additional Collector arising out of the judgment and order dated 16th August, 1994 passed by the Sub Divisional officer, Ichalkaranji in Revision application No.1 of 1993. The relief was to quash and set aside the same. This is the only relief prayed for in the petition. At the hearing of this appeal on behalf of the appellants learned Counsel has contended firstly that the order passed by the Tahsildar was without jurisdiction and secondly the proceedings preferred at the instance of the contesting respondents were taken after a period of 17 years. Even if the Revisional Jurisdiction is to be exercised that could not be exercised belatedly. Learned Counsel relies on the judgment of the Apex Court in Mohamad Kavi Mohamad Amin v. Fatmabai Ibrahim, (1997) 6 SCC 71 for the proposition that when there is no time limit for exercise of power under statute it should be exercised within reasonable time. It is contended on

behalf of the appellants that the reasonable time would be the time as set out under the provisions of the Limitation Act. Reliance is placed on the judgment of a single Judge in Radhabai Balkrishna Deshpande & Anr. v. Babu Dhondu Shewale deceased by L.Rs. Bhika Dhondu Shewale & Ors., 2001 (1) Mh. L.J. 629 wherein the learned Judge took a view that the period of 15 years could not be said to be reasonable.

2. On the other hand on behalf of the respondents learned Counsel contends that the petition was filed under Article 227 and in these circumstances the Letters Patent Appeal is not maintainable. Even otherwise he submits that there is no infirmity with the order as the learned Single Judge could in exercise of his supervisory jurisdiction under Article 227 correct the errors of law committed by Tribunals below and on this ground also this Court should not interfere with the said order.

3. We have heard the learned Counsel for the parties and we have also perused the impugned orders starting with the order of the Sub Divisional Officer. The order in favour of the appellants herein is dated 30th March, 1976. The Sub Divisional officer has recorded a finding that the Respondent Tukaram who was the tenant never lost possession of his 1/4th share and his tenancy was subsisting and, therefore, ought to have been protected. Inspite of that in the year 1975-76 the name of Shidgonda Satgonda was added as a cultivator of 3/4th portion of Tukaram share. This change was done by the Village

Officer in his own authority and, therefore, allowed the Revision Application. The Additional Collector found that there was some infirmity with the order of the Sub Divisional officer as an order could not have been passed without taking previous consent of the Collector. The Additional Collector, however, treated the order of the Sub Divisional Officer as a report and passed fresh orders setting aside the Tahsildar'sorder directing recovery in terms set out therein and confirmed the order of the Sub Divisional Officer. Revision preferred was dismissed and so also the Writ Petition against the said order.

4. Considering the reliefs, it is clear that what the appellant herein was challenging was the order of the Tribunals on the ground of want of jurisdiction and delay. That by itself cannot be the ground to hold that the appellant was invoking the provisions of Article 226 for all purposes. The petition for all purposes was under Article 227 of the Constitution of India.

5. Even otherwise we find that the learned Single Judge has treated the petition as one under Article 227 by exercising supervisory jurisdiction by holding that the order passed by the Commissioner was within jurisdiction. In that light of the matter we do not find this to be a fit case for interference.

6. Once the Tribunals below have entertained the Revision Application and the learned Single Judge in

exercise of the supervisory jurisdiction has allowed the error of law to be corrected the mere fact that there was a long delay cannot result in reversing the orders of the Tribunals below. A Writ Court would not allow technicalities to stand in the way of justice in the matter and this is what the learned Single Judge has done. It, therefore, calls for no interference. Appeal rejected. Ad-interim relief stands vacated.

7. Learned Counsel for the appellant prays for stay of the order. In the circumstances this would not be a fit case to stay the order. Oral Application for stay rejected.

(F.I. REBELLO, J.)

(ANOOP V. MOHTA, J.)